

BEAR RIVER MIGRATORY BIRD REFUGE SETTLEMENT ACT
OF 2002

APRIL 9, 2002.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. HANSEN, from the Committee on Resources,
submitted the following

R E P O R T

[To accompany H.R. 3958]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 3958) to provide a mechanism for the settlement of claims of the State of Utah regarding portions of the Bear River Migratory Bird Refuge located on the shore of the Great Salt Lake, Utah, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Bear River Migratory Bird Refuge Settlement Act of 2002”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) The Secretary of the Interior and the State of Utah have negotiated a preliminary agreement concerning the ownership of lands within the Bear River Migratory Bird Refuge located in Bear River Bay of the Great Salt Lake, Utah.

(2) The State is entitled to ownership of those sovereign lands constituting the bed of the Great Salt Lake, and, generally, the location of the sovereign lands boundary was set by an official survey of the Great Salt Lake meander line.

(3) The establishment of the Refuge in 1928 along the shore of the Great Salt Lake, and lack of a meander line survey within the Refuge, has led to uncertainty of ownership of some those sovereign lands.

(4) In order to settle the uncertainty concerning the sovereign land boundary caused by the gap in the surveyed Great Salt Lake meander line within the Refuge, the Secretary and the State have agreed to the establishment of a fixed

sovereign land boundary along the southern boundary of the Refuge and the State has agreed to release any claim to the lake bed above such boundary line.

(5) The Secretary and the State have expressed their intentions to establish a mutually agreed upon procedure to address the conflicting claims to ownership of the lands and interests in land within the Refuge.

SEC. 3. DEFINITIONS.

In this Act:

(1) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(2) REFUGE.—The term “Refuge” means the Bear River Migratory Bird Refuge located in Bear River Bay of the Great Salt Lake, Utah.

(3) AGREEMENT.—The term “agreement” means the agreement to be signed by the Secretary and the State to establish a mutually agreeable procedure for addressing the conflicting claims to ownership of the lands and interests in land within the Refuge.

(4) STATE.—The term “State” means the State of Utah.

SEC. 4. REQUIRED TERMS OF LAND CLAIMS SETTLEMENT, BEAR RIVER MIGRATORY BIRD REFUGE, UTAH.

(a) SPECIFIC TERMS REQUIRED IN AGREEMENT.—The Secretary shall not enter into an agreement with the State for the quitclaim or other transfer of lands or interests in lands within the Refuge unless the terms of the agreement include each of the following provisions:

(1) Nothing in the agreement shall be construed to impose upon the State or any of agency of the State any obligation to convey to the United States any interest in water owned or controlled by the State, except upon appropriate terms and for adequate consideration.

(2) Nothing in the agreement shall constitute admission or denial of the United States claim to a Federal reserved water right.

(3) The State shall support the United States application to add an enlarged Hyrum Reservoir, or another storage facility, as an alternate place of storage under the Refuge’s existing 1000 cubic feet per second State certified water right. Such support shall be contingent upon demonstration by the United States that no injury to water rights shall occur as a result of the addition.

(4) Nothing in the agreement shall affect jurisdiction by the State or the United States Fish and Wildlife Service over wildlife resources management, including fishing, hunting and trapping, within the Refuge.

(5) If the State elects to bring suit against the United States challenging the validity of the deed issued pursuant to the agreement, and if such suit is successful in invalidating such deed, the State will—

(A) pay the United States for the fair market value of all real property improvements on the property at the time of invalidation, such as dikes, water control structures and buildings;

(B) repay any amounts paid by the United States because of ownership of the land by the United States from the date of establishment of the Refuge, such as payments in lieu of taxes; and

(C) repay any amounts paid to the State pursuant to the agreement.

(6) Subject to the availability of funds for this purpose, the Secretary shall agree to pay \$15,000,000 to the State upon delivery by the State of a quitclaim deed that meets all applicable standards of the Department of Justice and covers all lands and interests in lands claimed by the State within the Refuge. Such payment shall be subject to the condition that the State use the payment for the purposes, and in the amounts, specified in subsections (b) and (c).

(b) WETLANDS AND WILDLIFE PROTECTION PROGRAMS.—

(1) DEPOSIT.—The State shall deposit \$10,000,000 of the amount paid pursuant to the agreement, as required by subsection (a)(6), in a restricted account, known as the Wetlands and Habitat Protection Account, to be used as provided in paragraph (2).

(2) AUTHORIZED USES.—The Executive Director of the Utah Department of Natural Resources may withdraw from the Wetlands and Habitat Protection Account, on an annual basis, amounts equal to the interest earned on the amount deposited under paragraph (1) for the following purposes:

(A) Wetland or open space protection in and near the Great Salt Lake.

(B) Enhancement and acquisition of wildlife habitat in and near the Great Salt Lake.

(c) RECREATIONAL TRAILS AND STREAMS DEVELOPMENT AND EXPANSION.—The Utah Department of Natural Resources shall use \$5,000,000 of the amount paid pursuant to the agreement, as required by subsection (a)(6), for the following purposes:

(1) Development, improvement, and expansion of motorized and non-motorized recreational trails on public and private lands in the State, with priority given to providing trail access to the Great Salt Lake as part of the proposed Shoshone and Ogden-Weber trail systems.

(2) Preservation, reclamation, enhancement, and conservation of streams in the State.

(d) COORDINATION OF PROJECTS.—The Executive Director of the Utah Department of Natural Resources shall seek to maximize the use of funds under subsections (b) and (c) through coordination with nonprofit organizations, Federal agencies, other agencies of the State, and local governments, and shall give priority to those projects under such subsections that include Federal, State, or private matching funds.

(e) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated \$15,000,000 for the payment required by subsection (a)(6) to be included as a term of the agreement.

PURPOSE OF THE BILL

The purpose of H.R. 3958 is to provide a mechanism for the settlement of claims of the State of Utah regarding portions of the Bear River Migratory Bird Refuge located on the north shore of the Great Lake, Utah.

BACKGROUND AND NEED FOR LEGISLATION

Surrounded by arid desert lands, it's little wonder the Bear River marshes have been a historical waterfowl oasis. Explorer John C. Fremont witnessed such a concentration of flocks that he wrote in 1843, "the waterfowl made a noise like thunder * * * as the whole scene was animated with waterfowl."

As settlers moved into the area, projects were undertaken to divert large amounts of river water for use by upstream settlements and farms. The marshes began to dry. By 1920, only two or three thousand acres of the original forty-five thousand acres of marshlands were left. The loss of the marshlands through drying was a serious problem affecting the survival of migrating birds. But the drying occurred slowly, and attracted little attention or concern.

Epidemics of avian botulism also threatened the marshland area. Records show that in addition to the two million birds that died in a 1910 outbreak, another die-off in 1920 claimed one and a half million birds. It was the public's reaction to these epidemics that brought about action. In 1928, Congress passed a special act to make the delta a National Wildlife Refuge.

In 1983, the rising waters of the Great Salt Lake topped the Refuge dikes, contaminating wildlife habitats with salt water and destroying marsh vegetation. Dikes and water control structures were heavily damaged and all buildings were demolished. In short, the Refuge was rendered inoperable.

By 1989, the Lake receded enough that the Refuge dikes could again be seen. Refuge employees, aided by scores of volunteers, began to work to put the Bear River Migratory Bird Refuge back together. To date, close to 1 million yards of earth has been moved to restore and enhance the Refuge. Forty-seven primary water control structures have been restored along with over forty-seven miles of dikes.

Bear River Refuge today consists of 74,000 acres of which the State of Utah claims 18,000 acres below the Great Salt Lake meander line as State sovereign lands. For nearly 75 years, the State and federal governments have disputed the ownership of these

lands. A 1976 Supreme Court decision (*Utah v. United States*) quieted title to the bed of the Great Salt Lake in the State of Utah up to and including the surveyed meander line, excepting the Refuge from its decision.

On September 28, 2001, negotiations between the Department of the Interior Fish and Wildlife Service and the State of Utah resulted in a settlement agreement to be signed by the Secretary of the Interior and the Governor of Utah. The settlement agreement is conditional on Congressional authorization and appropriation of required funds as well as State legislative approval. The 2002 Utah Legislature approved the necessary measures.

H.R. 3958 is the Congressional action necessary for the Secretary of the Interior to sign the final agreement. The bill authorizes an appropriation of \$15 million as reimbursement to the State for the lands, oil, gas and mineral rights within the Refuge. In return, the State will drop its claim to the disputed portion of the refuge.

COMMITTEE ACTION

H.R. 3958 was introduced on March 13, 2002, by Congressman James V. Hansen (R-UT). The bill was referred to the Committee on Resources. On March 20, 2002, the Full Resources Committee met to consider the bill. Congressman Hansen offered an amendment to add the word “executive” to the title of the Director of the Utah Department of Natural Resources to be consistent with the correct title of the position. It was adopted by unanimous consent. The bill as amended was then ordered favorably reported to the House of Representatives by unanimous consent.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Resources’ oversight findings and recommendations are reflected in the body of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 of the Constitution of the United States grants Congress the authority to enact this bill.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(2) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(3)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974.

2. Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

3. General Performance Goals and Objects. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this

bill is to provide a mechanism for the settlement of claims of the State of Utah regarding portions of the Bear River Migratory Bird Refuge located on the north shore of the Great Salt Lake, Utah.

4. Congressional Budget Office Cost Estimate. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 8, 2002.

Hon. JAMES V. HANSEN,
*Chairman, Committee on Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3958, the Bear River Migratory Bird Refuge Settlement Act of 2002.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Deborah Reis (for federal costs), and Marjorie Miller (for the state and local impact).

Sincerely,

STEVEN M. LIEBERMAN
(For Dan L. Crippen, Director).

Enclosure.

H.R. 3958—Bear River Migratory Bird Refuge Settlement Act of 2002

H.R. 3958 would satisfy the federal requirements under a land claim settlement agreement between the Department of the Interior (DOI) and the state of Utah. That agreement would settle a historic dispute over the boundaries of the Bear River Migratory Bird Refuge in Utah. H.R. 3958 specifies certain terms and conditions to be included in the agreement and would require Utah to deliver a quitclaim deed covering all land and interests within the refuge claimed by the state in exchange for a federal payment of \$15 million. The bill would authorize the appropriation of that amount to the Secretary of the Interior to make that payment.

Based on information from DOI, CBO estimates that implementing this legislation would cost \$15 million in 2003, assuming appropriation of the authorized amount. The bill would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. H.R. 3958 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments. Any costs resulting from the settlement agreement would be incurred voluntarily by the state as a part to that agreement.

The CBO staff contacts for this estimate are Deborah Reis (for federal costs) and Marjorie Miller (for the state and local impact). This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

